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Keep The Door To Environmental Protection Open

A Special Report to the Legislative Assembly of Ontario

**Submitted by Eva Ligeti, Environmental Commissioner of Ontario
October 10, 1996**



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October 10, 1996

The Honourable Chris Stockwell
Speaker of the Legislative Assembly
Room 180, Legislative Building
Legislative Assembly
Province of Ontario
Queen's Park, Toronto, Ontario

Dear Mr. Speaker:

In accordance with section 58(4) of the *Environmental Bill of Rights*, 1993, I respectfully present this special report for your submission to the Legislative Assembly of Ontario.

Sincerely,

Eva Ligeti
Environmental Commissioner of Ontario



Keep The Door To Environmental Protection Open

Introduction

As Environmental Commissioner of Ontario, it is my responsibility to review how provincial ministries meet the requirements of the *Environmental Bill of Rights*. When necessary, I submit special reports to the Legislative Assembly on matters related to the legislation.

Ontario is undergoing a massive policy shift in environmental protection. The list of recent environmental changes in the Appendix to this report is extensive, but really only shows the tip of the iceberg. The ministries are making remarkable changes to environmental safeguards either behind closed doors or with minimal public participation. This is a clear and unacceptable departure from the goals and purposes of the *Environmental Bill of Rights*.

I am compelled to submit this special report because I believe the elected members of the Legislative Assembly must fully understand that changing or eliminating environmental safeguards too quickly and without adequate public consultation produces poor decisions that will need to be fixed later on. That costs money and does little to safeguard the environment. Hasty proposals do not produce effective or efficient results.

I make the following recommendation to avoid future restrictions on the public's right to participate in environmental decision making. My recommendation is practical and achievable and should be adopted immediately.

Recommendation

Ministries comply with the public participation and notification requirements of the *Environmental Bill of Rights* by:

1. **Posting environmentally significant proposals on the Environmental Registry.**

2. Providing Ontarians with adequate time, information and opportunity for comment.
3. Assessing and reporting the environmental effects of the proposed changes.

The Issues

To provide context for my recommendation, I draw your attention to three issues which have serious consequences for the protection, conservation and restoration of the natural environment.

1. *Ministries are failing to post environmentally significant decisions on the Environmental Registry.*
2. *Ministries are failing to provide Ontarians with adequate time, information and opportunity for comment.*
3. *Ministries are failing to assess and report the environmental effects of the proposed changes.*

Each of these issues is troubling on its own. Together they form such a significant departure from the purposes of the *Environmental Bill of Rights*, I am compelled to comment.

Issue 1.

Ministries are failing to post environmentally significant proposals on the Environmental Registry.

The *Environmental Bill of Rights* gives Ontarians the right to participate in the environmental decision-making process. The Environmental Registry keeps the door open to that process.

Unfortunately, ministries are using the Environmental Registry unevenly – and sometimes not at all. This restricts Ontarians' right to comment on environmentally significant proposals and deprives the government of the valuable information and perspectives it needs to adequately protect the environment.

Below are some examples of environmentally significant decisions made in the past eight months that were not posted on the Environmental Registry, and typically, were not open to any other public consultation.

- **Ministry Action:** The Ministry of Natural Resources did not post the policies contained in its six new business plans which cover most of the Ministry's mandate, including forest, fish, wildlife, parks, lands, waters and non-renewable resources management.
Consequences: Because there was no Registry posting, most Ontarians had no say in plans which affect most of the Ministry's mandate and are as sweeping as the Ministry of Environment and Energy's review of 80 regulations, which, in contrast, was posted on the Registry.
- **Ministry Action:** The Ministry of Natural Resources did not post Bill 52, the *Aggregate Resources Statute Law Amendment Act*. It will establish a self-regulation system for the aggregate and petroleum industries.
Consequences: Ontarians had little say on a Bill which could reduce the public's right to receive notice of new aggregate permits and licences on the Registry, and reduce or remove the environmental protection conditions currently attached to these licences and permits.
- **Ministry Action:** The Ministry of Consumer and Commercial Relations did not post Bill 54, the *Safety and Consumer Statutes Administration Act*.
Consequences: Ontarians had little say on a Bill which will allow the Ministry to delegate environmental monitoring, and health and safety inspections for underground fuel storage tanks to an industry-run, self-funded, not-for profit organization.

Issue 2.

Ministries are failing to provide Ontarians with adequate time, information and opportunity for comment.

Ontario's agenda for environmental policy change is crowded (see Appendix). Ministries are unrealistically asking Ontarians to absorb, understand, and comment on major environmental change – without adequate time, information and opportunity.

Inadequate Time

Either comment periods haven't been provided, or they have been unreasonably short. Some issues with huge implications were released for public comment during holiday periods or overlapped with other public comment periods. Businesses, municipalities, community groups and individuals have had to make quick submissions, or none at all. Many have asked for extensions.

Occasionally, the Ministry of Environment and Energy has modestly extended public comment periods. In early September 1996, Minister Sterling added 30 days to the consultation period on proposed reforms to Ontario's environment and energy regulations. This initiative proposed eliminating, revising, or consolidating 80 environmental regulations. It is impossible to review all this material in the given time, much less to provide meaningful comment. Other examples of inadequate comment time include:

- **Ministry Action:** The Ministry of Environment and Energy provided only 54 days for comment on its Environmental Assessment reform initiative, Bill 76, the *Environmental Assessment and Consultation Improvement Act*.
Consequences: Ontarians had inadequate time to comment on a Bill that is sweeping and complex. Many Ontarians are concerned that this initiative is happening too fast and without enough public insight and expertise. Mistakes made in the legislation now will need to be fixed later – that takes time and money and can create an uncertain investment environment. Ontarians want, and should have the means, to help the government get the reforms right the first time.
- **Ministry Action:** The Ministry of Environment and Energy gave the public only 38 days to comment on its proposal to exempt Niagara Escarpment pits and quarries from the previously required *Niagara Escarpment Planning and Development Act* approval from the Niagara Escarpment Commission.

Consequences: Ontarians had too little time to comment on a proposal that has potential environmentally significant effects on the Niagara Escarpment ecosystem, especially since the proposal was an abrupt reversal of the position the Ministry had taken only nine days before.

Inadequate Information

Environmental Registry postings should provide full, clear, and objective proposal descriptions, but incomplete, vague or subjective information continues to prevent Ontarians from understanding environmental implications and providing meaningful comments to safeguard the environment.

Ministries are also failing to provide timely information, by either not releasing relevant information when the public comment period starts, or not releasing it at all. For example:

- **Ministry Action:** In its consultation paper “Responsive Environmental Protection”, the Ministry of Environment and Energy promised a Technical Annex to support its assertions that the environment will be safeguarded. However, the Technical Annex was released weeks later and mostly repeated text of the main paper for many issues.
Consequences: Ontarians cannot comment meaningfully without detailed background information and analysis.
- **Ministry Action:** The Ministry of Environment and Energy’s “Responsive Environmental Protection” proposed to revoke a regulation which controls the sulphur content of fuel oil in Metropolitan Toronto, but the Technical Annex assures that other regulations will ensure air quality is adequately protected.
Consequences: Ontarians had no way of knowing that the proposal actually allows double the current sulphur content in Metro Toronto’s fuel oil – unless they studied at least three separate regulations.
- **Ministry Action:** The Ministry of Housing posted its proposal for “Back to Basics: A Consultation Paper on the Focus of the Ontario Building Code”. The posting vaguely referred to effects on resource conservation.
Consequences: The Registry posting failed to disclose that energy conservation requirements for insulation, window glazing, and so on may be reduced or

eliminated from the Building Code. Ontarians had to get a separate discussion paper to find this out.

Inadequate Opportunity

My office recommended to ministries in October 1995 that they consider the *Environmental Bill of Rights*' statutory process for public notification as the minimum, not the standard, level of public notice. However, ministries are failing to consider additional comment opportunities like public meetings, mailings and newspaper announcements when public interest in the issue is high. For example:

- **Ministry Action:** The Ministry of Environment and Energy did not provide public forums to discuss its proposed reforms of 80 environmental regulations. **Consequences:** Metro Toronto held a public forum on the reforms but essentially only Metro Toronto residents could participate. The Ministry should have sponsored similar forums to encourage broader-based public comment.
- **Ministry Action:** The Ministry of Environment and Energy provided no comment period before it revoked the *Intervenor Funding Project Act*. **Consequences:** Ontarians had no opportunity to comment on a decision that further restricts the public's right to participate in environmental decision making.

Issue 3.

Ministries are failing to assess and report the environmental effects of proposed changes.

Driven by budget considerations, Ontario ministries are backing off what used to be primary provincial responsibilities. The background analyses focus on cost savings, not environmental benefits.

Ministries should assess and report the potential environmental effects of decisions made in the last year – as well as future ones – case by case, using objective, measurable parameters, and accurate, up-to-date baseline data. Ministries should also specify what environmental or compliance parameters they will monitor to measure the effects of proposed changes, and commit to publicly reporting those effects. When information about key environmental or compliance parameters is unavailable, ministries should say so.

A practical and efficient way to show how the environment will be safeguarded under a proposed regulation is to include a Regulatory Impact Statement. In fact, section 27(4) of the *Environmental Bill of Rights* says a minister can include a Regulatory Impact Statement in Registry notices for proposed environmentally significant regulations.

Only four out of 42 proposals posted by the Ministry of Environment and Energy as of August 31, 1996 were accompanied by a Regulatory Impact Statement – each of which was about two sentences long and provided little information about environmental, social or economic effects. In many cases ministries have prepared the kind of information required in a Regulatory Impact Statement, but do not make it public. Regulatory Impact Statements take little effort and help the public evaluate proposed changes.

Below are some recent examples where ministries have failed to assess or report the environmental effects of proposed changes.

- **Ministry Action:** The Ministry of Natural Resources' move to self-regulation for the sand, gravel and quarry industry means industry will inspect, monitor and report on compliance, while the Ministry will set and enforce standards and audit industry-led monitoring programs.
Consequences: Ontarians do not have the background analyses they need to evaluate how these changes will affect the environment. For example, they do not know who will respond to public complaints or how the Ministry will enforce standards given major staff reductions. Detailed information should have been compiled and made public right from the start.
- **Ministry Action:** In "Responsive Environmental Protection", the Ministry of Environment and Energy proposed that municipalities handle approvals for activities that may create noise, odour or dust.
Consequences: Ontarians do not know exactly what responsibilities would be given to municipalities so there is uncertainty about who will set province-wide standards, and who will be responsible for compliance and enforcement.
- **Ministry Action:** The Ministry of Environment and Energy did not assess the effects of its cutbacks in air quality monitoring, its shut-down of drinking water labs in three cities and its lay-offs of scientists.
Consequences: Ontarians have not been given the tools they need to evaluate the effects of these decisions, even though the Ministry of Environment and Energy stresses the importance of performance reporting on environmental conditions in its documents.

Closing

I am concerned that the government's sweeping changes to environmental safeguards are happening behind closed doors, with minimal public consultation. Like many Ontarians, I support progressive environmental reform. But the process must be effective, timely, open and fair.

To maintain environmental protection while pursuing the current policy shift, ministries must take the time to listen to, and consider, Ontarians' concerns. Unless the government can show that its proposed changes will protect, conserve and restore the natural environment, the public wants to keep existing environmental safeguards.

I encourage the ministries to implement my recommendation in order to comply with the *Environmental Bill of Rights* and to keep the door open to public participation in environmental decision making.

I respectfully submit this special report to the Speaker of the Legislative Assembly of Ontario.



Appendix



Recent Environmental Initiatives In Ontario (A Partial List)

Initiative	Registry Comment Period	Other Public Consultation
November 1995 Land Use Planning Legislation (MMA) Regulation reducing scope of <i>EBR</i> (MOEE)	60 days none	10 days Legislative Committee Hearings no public comment opportunity
December 1995 Amending four MNR laws via Bill 26 (MNR)	none	part of 15 days Legislative Committee Hearings
Amending <i>Municipal Act</i> via Bill 26 (MMAH)	none	part of 15 days Legislative Committee Hearings
Amending <i>Mining Act</i> via Bill 26 (MNDM)	none	part of 15 days Legislative Committee Hearings
Marketing government land for development (MBS)	none	none mentioned in MBS announcement
January 1996 Land Use Planning Policy (MMA) Ontario Building Code Reform (MHous) Environmental Land Use Planning Reform (MOEE)	60 days 35 days 30 days	linked to land use planning legislation Building Code Amendment Process MOEE refers to Sewell Commission, Bill 20 and Provincial Facilitator
Temagami Land Use Plan (MNR)	30 days	Comprehensive Planning Council
February 1996 Tax Rebates for Managed Forests (MNR)	none	Election commitment
March 1996 End of Intervenor Funding (MOEE)	none	MOEE refers to a "range of stakeholders"

Initiative	Registry Comment Period	Other Public Consultation
April 1996 New governance for Serpent Mounds Park (MNR) Amending three MNR laws via Bill 36 (MNR) \$3 million grant for Cornwall Ethanol Plant (OMAFRA)	none none none	no response to ECO's enquiry no response to ECO's enquiry none mentioned in OMAFRA's response to ECO's enquiry
May 1996 Business Plans (all ministries) Changes to Industrial Effluent Monitoring Regs (MOEE) Amendments to numerous Acts via Bill 46 (OMAFRA) Bill 52 governing aggregate and petroleum industries (MNR) Changes to Safety and Consumer Laws (MCCR)	none none none none none	comments invited to Management Board MOEE deemed not environmentally significant no response to ECO's enquiry three days Legislative Committee Hearings none mentioned in MCCR's response to ECO's enquiry
Elimination of five Advisory Bodies (MNR) Ending Farm Pollution Advisory Committee (MOEE)	none none	no response to ECO's enquiry no response to ECO's enquiry
June 1996 New Environmental Approvals via Bill 57 (MOEE) Amending <i>Environmental Assessment Act</i> (MOEE) New Smog Plan for Ontario (MOEE) New Landfill Standards (MOEE) Unlicensed sale of animal parts (MNR) Creation of Massasauga Provincial Park (MNR) Eliminating Horticultural Inspectors (OMAFRA)	87 days 54 days 75 days 82 days none none none	with some industrial associations seven days Legislative Committee Hearings and public meetings two-day public workshop none mentioned by MOEE no response to ECO's enquiry no response to ECO's enquiry none mentioned in OMAFRA's response to ECO's enquiry
August 1996 Regulatory Reform Package (MOEE) Changing Pesticide Regulations (MOEE) Exemption for Niagara Escarpment pits and quarries (MOEE) Ending bacterial testing of tap water (MOH)	76 days 38 days 38 days none	meetings with some stakeholders with pest control industry and farmers none mentioned by MOEE recent enquiry sent

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